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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/640,557	08/18/2000	Clifford Braun	992070.01	7021

7590

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EXAMINER

THOMPSON, HUGH B

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/640,557

Applicant(s)

BRAUN ET AL.

Examiner

Hugh B. Thompson II

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 15, 18, 19 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-14, 16, 17 and 20-22 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-14, 16, 17, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry #6,505,707 in view of Potts #766,061. Berry, as best seen in Figures 2, 3, 6, and 12, and recited in column 7, lines 5-45, discloses a tree stand comprised of a platform 12, tree attachment means 90, folding seat 50, folding seat back 44, back frame 46, and pivoting/hinged access door 32, and door frame members 12a, 12b, 32a, and 32b. Berry fails to disclose a pair of access doors hinged at outer edges to the frame members and opposed in movement for opening and closing positions.

Potts, as best seen in Figures 1 and 2, teaches the general utility of an access door assembly comprised of frame members 1, and opposed access doors 2, 2a, which are hinged (3, 3b) at outer edges thereof to the frame members and substantially fill the access opening. An assembly such as this provides for simple ingress and egress of a user/users thereof through openings. Therefore, to one of ordinary skill in the art, it would have been obvious, as a matter of engineering design choice, to provide the tree stand of Berry with a pair of access doors as taught

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by Potts, so as to provide for simple ingress and egress of a user/users thereof through openings, while producing no new an unexpected results.

### ***Response to Amendment***

The Affidavit filed on January 5, 2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Berry 707' reference.

The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Berry reference. There is no establishment of the effective date of any of the drawings or photographs, i.e, dated drawings, dated photographs, dated notes, or the like. Absent a showing of facts that in character and weight to establish a reduction to practice or conception of invention prior to the effective date of the reference, the evidence is insufficient and the Affidavit is ineffective.

### ***Response to Arguments***

Applicant's arguments filed in the Amendment of January 5, 2004 have been fully considered but they are not persuasive. The applicant asserts the non-analogous relationship between the double-hinged door of Potts and the door of the instant invention of Berry reference. In response to that argument, the applicant should note that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ

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871 (CCPA 1981). The use of double doors is certainly a representative of means of egress and ingress with respect to an opening. To suggest that the use of two doors versus one door in the Berry reference is not obvious in view of well-known teachings of double doors, hints at the exclusive use of doors only on tree stands, a position the Examiner respectfully does not accept. It is admitted that the tree stand art may not exclusively disclose double doors, but the applicant fails to add any additional structure of the connection of the doors to the rest of the tree stand so as to distinguish therefrom. Were the applicant to properly recite such a connection, the claims may be in condition for allowance.

#### ***Allowable Subject Matter***

Claim 6 is objected to as being dependent upon rejected base claim 1, but would be allowable if rewritten in independent form including all of the limitations of claim 1, any intervening claims, and rewritten to overcome any Section 112 ambiguities as noted above. The primary reason for the allowable subject matter is the inclusion of first and second flaccid means, one spanning the front of the platform and the back frame, the other spanning the seat and the back frame. The prior art of record fails to teach or suggest the combination with the pivoting pair of closures absent the applicant's own disclose.

#### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hugh B. Thompson II whose telephone number is (703) 305-0102. The examiner can normally be reached on Monday thru Friday 9 am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 703 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hugh B. Thompson  
Art Unit 3634  
May 2, 2004

HUGH B. THOMPSON II  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600